IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos 16086, 16084
and 16088 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ALIAYANA NASIBKHAN KALAJI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16086 of 2003

MR PS CHAMPANERI for Petitioner No. 1

MR PRADIP D BHATE, AGP for Respondent No. 1-2

DS AFF.NOT FILED (R) for Respondent No. 3,5

MR HS MUNSHAW for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 16/12/2004

COMMON ORAL JUDGEMENT

#. In all these petitions, common question of law and facts arises, and, therefore, all these petitions are being disposed of by this common order.

#. In all these petitions, respective petitioners have prayed for issuance of appropriate writ, order and direction quashing and setting aside the impugned orders dated 21.7.2003 passed by the Gujarat State Disaster Management, Gandhinagar. It is also further prayed that the respondents may be directed to pay compensation and/or financial assistance as assessed by the Survey Committee and directed by the Lokpal - District Judge, Surendranagar in Application Nos.3056 of 2002 (Special Civil Application No.16084 of 2003), 3057 of 2002 (Special Civil Application No. 16088 of 2003) and 3058 of 2002 (Special Civil Application No.16086 of 2003).

#. It is the case of the petitioners that the house of the respective petitioners bearing house nos. 151, 152 and 153 respectively came to be damaged in the earthquake in 2001 and the applications were submitted before the appropriate authority and the Committee took decision on 18.08.2001 to pay the amount of compensation considering the respective category and the amount which is mentioned in the orders dated 18.08.2001 which are annexed at Annexure `A' to the petition. It is the case of the petitioners that subsequently, Additional District Development Officer, Taluka Panchayat Patdi, Dasada informed the petitioners that their applications are rejected for the reasons stated in the communication at Annexure `B' to the petition and therefore all the petitioners approached the Lokpal and District Judge, Surendranagar by way of making application Nos.3056 of 2002 (Special Civil Application No.16084 of 2003), 3057 of 2002 (Special Civil Application No. 16088 of 2003) and 3058 of 2002 (Special Civil Application No.16086 of 2003). After giving opportunity and considering the evidence on record, the Lokpal and District Judge, Surendranagar passed the separate orders dated 06.06.2002 directing the Taluka Development Officer Patdi to pay the amount of compensation with regard to house nos. 151, 152 and 153 respectively as per the order dated 18.08.2001. It is the case of the petitioners that, subsequently the petitioners were communicated the impugned orders dated 21.07.2003, by which, the Taluka Development Officer, Patdi (Dasada) informed the petitioners that the applications of the petitioners and the orders passed by the Lokpal and District Judge, Surendranagar were sent to respondent no. 1 i.e. Gujarat Disaster Management Authority, Gandhinagar for

sanction and it is informed by them that the decision of the Lokpal and District Judge, Surendranagar is not in consonance with the scheme declared by the State Government and therefore compensation which is required to be paid to the respective petitioners it not required to be paid. Being aggrieved and dissatisfied with the aforesaid orders dated 21.07.2003, the petitioners have preferred the present petition under Article 226/227 of the Constitution of India.

#. Affidavit-in-reply is filed on behalf of the Taluka Development Officer, Patdi Taluka Panchayat, District Surendranager justifying refusal to pay compensation to the respective petitioners by submitting that the aforesaid houses bearing nos. 151, 152 and 153 were of the ownership of the father of the petitioners and that he is already paid the compensation and therefore separate compensation is not required to be paid to the petitioners. Along with the affidavit-in-reply, some documentary evidences are also produced to establish that all three properties were of the ownership of the father of the petitioners. Affidavit-in-reply is also filed on behalf of the Gujarat State Disaster Management Authority in which it is reiterated what is stated in the affidavit-in-reply filed by the Taluka Development Officer by producing certain documentary evidences. They have tried to justify that the petitioners are not entitled to any relief/compensation as ordered by the Lokpal and District Judge, Surendranagar.

#. Mr.Champaneri, learned advocate appearing for the petitioners, has submitted that once the Lokpal and District Judge, Surendranagar passed the order, unless and until the said order is set aside by the appropriate authority, the respondents cannot refuse to make the payment on the ground that the orders passed by the Lokpal and District Judge, Surendranagar is not in consonance with the scheme. He submitted that the respondents are not appellate authority over the order passed by the Lokpal i.e. District Judge, Surendranagar. He further submitted that the learned District Judges are appointed to function as Ombudsman to act in cooperation with the Government and other voluntary agencies to ensure the effective relief and rehabilitation and learned District Judge, Surendranagar has been appointed as Ombudsman in pursuance of the judgment and order passed by the Division Bench of this Court in the case of Bipinchandra J Divan and others V/s State of Gujarat and others reported in 2001 (2) GLR page 1394. Relying upon the aforesaid decision, Mr.Champaneri has submitted that intention of this Court was to see that the grievance of

the affected persons are redressed by the Ombudsman as early as possible and there is no hindrance by the other authorities in making payment of compensation. Therefore, it is submitted that the impugned orders dated 21.07.2003 are without jurisdiction and even contrary to the intention of this Court which is reflected in the aforesaid judgment.

#. Mr.Munshaw, learned advocate appearing for the Taluka Development Officer, has submitted that in fact they have followed the directions issued by the Gujarat Disaster Management Authority. He submitted that considering the evidence on record which is produced along with the affidavit-in-reply, the petitioners are not entitled to any compensation as directed by the Lokpal and District Judge, Surendranagar.

#. Mr.Bhate, learned AGP, who appears on behalf of the Gujarat Disaster Management Authority has reiterated what is stated in the affidavit-in-reply and has submitted that he has relied upon the evidence which is produced along with the affidavit-in-reply. He submitted that as such, the petitioners are not entitled to any compensation as the properties bearing nos.151, 152 and 153 were of the ownership of the father of the petitioners at the relevant time, who is already paid the compensation, and, therefore, they were not entitled to any compensation as per the scheme of the State Government, and, therefore, requested to dismiss the present petitions.

#. Heard the learned advocates for the respective parties.

#. It is an admitted position that the learned District Judge, Surendranagar is appointed as Ombudsman in pursuance of the order passed by the Division Bench of this Court in the case of Bipinchandra J Divan and others (supra) to act in cooperation with the Government and other voluntary agencies to ensure effective relief and rehabilitation. Considering the evidence on record at the relevant time, the learned District Judge, Surendranagar passed the order directing the Taluka Development Officer to pay the compensation to the respective petitioners, it is not open for the respondents, more particularly, the Gujarat State Disaster Management Authority and/or any other authority to sit as appellate authority against the order passed by the Lokpal, i.e. learned District Judge, Surendranagar. If they are aggrieved, then the proper remedy is to challenge the order passed by the Lokpal, i.e. concerned

District Judge before the appropriate forum, but they cannot themselves take a decision not to comply with the orders passed by the Lokpal and District Judge on the ground that the same is not in consonance with the scheme. If that is permitted, it will be contrary to the intention of this Court which is reflected in the case of Bipinchandra J Divan and others (supra). The Gujarat State Disaster Management Authority cannot refuse to make the payment in spite of the orders passed by the Lokpal, i.e. District Judge, Surendranagar on the ground that the same is not in consonance with the scheme. As stated above, the appropriate authority has to approach the appropriate forum.

##. Considering the aforesaid facts and circumstances of the case, the impugned orders dated 21.7.2003 are without any jurisdiction and are required to be quashed and set aside and are hereby quashed and set aside. However, in the facts and circumstances of the case, it will be open for the respondents inclusive of the Gujarat Disaster Management Authority to move appropriate application before the Lokpal, i.e. District Judge, Surendranagar to reconsider the orders dated 06.06.2002 passed in Nos.3056 of 2002 (Special Civil Application No.16084 of 2003), 3057 of 2002 (Special Civil Application No. 16088 of 2003) and 3058 of 2002 (Special Civil Application No.16086 of 2003) on producing necessary materials and the evidence. If such applications are made within a period of four weeks from today, the Lokpal and the District Judge, Surendranagar is directed to reconsider the same after giving opportunity to respective petitioners and shall decide the same on the basis of the evidence which might be produced before him within a period of three months thereafter. As such, Mr.Champaneri, learned advocate appearing for the petitioners, has also fairly agreed that they have no objection if the entire case is reconsidered by the Lokpal, i.e. learned District Judge, Surendranagar again and they will also produce necessary evidence over and above the evidences which are already produced at the time when the impugned orders dated 06.06.2002 were passed. As and when such evidences are produced, the Lokpal and District Judge, Surendranagar is directed to consider the same, as stated above, within the stipulated time, as stated above.

##. It goes without saying that if the application, as stated above, is not made by the concerned respondents within the stipulated time, as stated above, the respondents are directed to comply with the orders passed by the Lokpal, i.e. learned District Judge,

Surendranagar dated 06.06.2002 immediately.

##. In view of the above, these petitions are allowed. Rule is made absolute to the aforesaid extent in each of the petitions with no order as to costs.

(M.R.Shah,J)

(pathan)